

# Continuing Power of Attorney for Property

(Made in accordance with the Powers of Attorney Act and the Substitute Decisions Act, 1992)

**Y**ou may use this form to appoint a person of your choice to make decisions about your **PROPERTY** and manage your **FINANCES** on your behalf. This may include doing things such as signing documents for you, paying your bills, or selling your home. This power of attorney will allow the person you appoint to manage your financial affairs *even if* you become mentally incapable. The person you appoint is called your "attorney for property." You may name more than one attorney if you wish.

The power of attorney will be effective immediately unless you decide that you want it to come into effect at a later date or under specific circumstances. The form says what authority your appointed attorney will have over your financial affairs. If you do not change what is currently on the form by putting conditions or restrictions on the authority, he or she will have the power to do anything with your property that you could do yourself if you were mentally capable — except make a will. But remember, your property will still belong to you and must be managed by your attorney in your best interests and in accordance with the law.

It's important to know that you are not required to appoint an attorney for property. This is **your choice**. Giving a power of attorney is a very serious matter. You are giving the person you appoint significant power over your property. There is always a risk that your attorney could misuse this power. If you have any doubts about the motives or ability of the person you are considering — or are under any pressure from your proposed attorney — do not appoint that person.

Before you decide, you may want to talk with your family or close friends. Although you are not required to consult a lawyer in order to make a legally binding power of attorney, it is a good idea to do so. Consulting with other expert advisors is also a good idea, providing they are impartial and concerned only with your best interests.

This document includes guidelines designed to help you complete this power of attorney. The guidelines also point out some of the reasons why you may or may not wish to make certain choices. But remember, all decisions are up to you.

**If you have already made a power of attorney for property that continues to be effective after you become mentally incapable, you do NOT need to make a new one.**

Even though the *Substitute Decisions Act* will not be in force until early 1995, this form contains all the clauses necessary to make it a valid continuing power of attorney NOW. It will also be in a form which will be valid if it is SIGNED AFTER the *Substitute Decisions Act, 1992*, comes into effect. If you wish, you may use another form or make your own, but if you do this, make sure that it meets the legal requirements necessary under current law to make a valid continuing power of attorney.



Ministry of  
the Attorney  
General

145 Queen Street West  
Toronto, Ontario, Canada  
M5H 2N8

Office of the  
Public Trustee

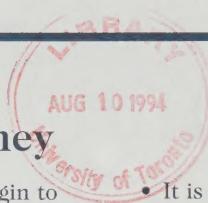
Ce document, intitulé «Procuration perpétuelle relative aux biens», est également disponible en français. Pour en obtenir un exemplaire, veuillez écrire à l'adresse suivante:

Projet de la prise de décisions au nom d'autrui

Bureau du Curateur public, Ministère du Procureur général  
145, rue Queen ouest, 6<sup>e</sup> étage, Toronto (Ontario) M5H 2N8



# Part 1: Appointing Your Attorney



- Read this section carefully before you begin to complete this form.
- To make a valid power of attorney, you must be 18 years of age or more and "mentally capable" of giving a continuing power of attorney for property. This means that you:
  - know what property you have and its approximate value
  - are aware of your obligations to those people who depend on you financially
  - know what your attorney has the authority to do
  - know that your attorney must account for all the decisions he or she makes about your property
  - know that, if you are capable, you may cancel your power of attorney
  - understand that unless your attorney manages the property prudently, its value may decline
  - understand that there is always the possibility that your attorney could misuse the authority
- Consider who you want to appoint as your attorney for property. (The word "attorney" does *not* mean "lawyer.") The attorney can be a relative, friend, or someone else. You can choose anyone you want as your attorney as long as he or she is 18 years of age or more. Many trust companies are prepared to act as attorney. They charge a fee for this service. Some individuals choose this option because they want an attorney who is professional and impartial.
- Talk to the person you wish to appoint and make sure that he or she is willing to accept the responsibility involved in being your attorney for property.

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*These guidelines are provided solely to assist you in completing this form. They do not cover every option available in the Substitute Decisions Act, 1992. They are not legal advice. Some legal terminology in the statute has been described in simpler words to make it easier to understand.*

- It is important to know that by making this power of attorney, you revoke (cancel) any other continuing power of attorney for property that you have made before. If you have made such a power of attorney before and you don't want to revoke it, you should consult with a lawyer so that the necessary changes may be made to this form.
- If you want more than one person involved in your financial decisions, you can name more than one person to be your attorney for property. But you are not required to do so. On the other hand, you may decide not to name more than one attorney if you're concerned about the possibility of disagreements or you believe it may be difficult for others to deal with more than one person concerning your finances.
- Once you have decided who you want to appoint as your attorney(s), write your name and the name of the person(s) you are appointing in the space provided in **Part 1** of the form.

## A Word Of Caution

**The person you appoint could have significant power over your finances. Although your attorney is required by law to act in your best interests, misuse can and does happen. Make sure that you are not deciding under pressure from your proposed attorney or anyone else. Also, when deciding who to appoint, consider whether the person:**

- **is someone you know well**
- **is someone you trust completely**
- **is concerned only with your best interests**
- **has good judgement and financial management skills**

## Part 2: Joint or Separate Attorneys

(Fill out this part **only** if you have named more than one attorney *and* you want your attorneys to be able to make decisions separately, that is, without having to act together).

If you have appointed more than one attorney in this form, *the law will require them to make decisions together unless you specifically give them permission to act separately.* You can give permission to act separately by writing it down in this part of the form. If you don't do this, your attorneys will be required to act together all the time.

There are some good reasons for giving your attorneys the flexibility to make decisions separately. Think, for example, about what would happen if one of your attorneys were temporarily unavailable because of sickness, vacation, or some other reason. If your attorneys are allowed to act separately, this will not be a problem.

On the other hand, you may decide **not** to give this permission if you want to ensure that there is **always** a "double-check" that the decision is the right one. You may also wish to avoid the risk of inconsistent decisions that may occur as a result of attorneys acting separately.

You decide. If you have named more than one attorney *and* you want them to be able to act separately from one another, write the words "jointly and severally" in the space provided in **Part 2** of the form. ("Jointly and severally" is a legal term which means "together and separately.") If you don't do this, your attorneys will be required to make your financial decisions together at all times.

## Part 3: Substitute Attorney

(This part is OPTIONAL.)

Your appointed attorney may not be willing or able to act on your behalf when the time comes. Or something may happen after your attorney has begun to make decisions on your behalf that prevents him or her from continuing to act for you. In either case, you could be left with no one to manage your financial affairs. *So you may wish to consider naming a substitute attorney.*

This is especially important if you have named only one attorney. If you have named more than one attorney, there is less reason to be concerned because the remaining attorney can usually carry on if something happens to the other. You may still want to name a substitute, however, to replace the one who cannot act. There is no guarantee that something will not happen to your remaining attorney. Or you may feel strongly that there should always be more than one person involved in your financial decision-making.

Your substitute attorney will have the same authority and powers as the attorney he or she replaces.

To name a substitute attorney, complete **Part 3.**

## Part 4: Authority of Attorney(s)

This part of the form is very important. It tells your attorney, and people who deal with him or her, the types of financial decisions your attorney is allowed to make on your behalf.

This part of the form gives your attorney(s) the authority to make *any kind of financial decision that you could make yourself — except make a will*. If you wish to limit your attorneys' authority, you may do so in **Part 5** of this form.

This part also states that the power of attorney may be used *even if* you become mentally incapable of making financial decisions. It makes it clear that you want the power of attorney to "continue" to be effective if this happens.

Existing law (the *Mental Health Act*) provides that the Public Trustee may, in some circumstances, be appointed to manage your finances if you become incapable. This power of attorney includes a statement that expresses your intention that the power of attorney will continue to be effective even if the Public Trustee is appointed to manage your financial affairs under the *Mental Health Act*. If this happens and your attorney wants to continue to have authority, your attorney must send the Public Trustee:

- a copy of the power of attorney
- a written notice that he or she intends to manage all of your property by means of the power of attorney

When the *Substitute Decisions Act* is declared in force, this clause will become unnecessary and inoperative. If the Public Guardian and Trustee is appointed as your statutory guardian of property, your attorney may apply to replace the Public Guardian and Trustee as your guardian by producing:

- a copy of the power of attorney
- a written statement that he or she will manage your property in accordance with the power of attorney

Under the new law, it will not be necessary for this clause to be included in the power of attorney to entitle your attorney to make this application to

continue managing your financial affairs as your statutory guardian.

This form does not allow your attorney to make decisions about your personal care. If you wish to appoint an attorney for your personal decisions you can make a separate document called a "Power of Attorney for Personal Care."

## Part 5: Conditions and Restrictions

(This part is OPTIONAL.)

The law permits you to limit your attorney's authority. For example, you may limit your attorney to transactions concerning specific assets, such as your bank accounts, or prohibit him or her from dealing with a particular piece of property.

But think carefully before you limit the scope of your attorney's authority. If you become incapable of making financial decisions and your attorney does not have full authority, it may be necessary for your attorney or someone else to be appointed as your guardian in order to manage the balance of your property.

You can put other conditions and restrictions in your power of attorney if you wish. Some examples of such conditions and restrictions are:

- requiring your attorney to consult with specific people (e.g., family members, financial advisors) before certain decisions are made
- specifying the types of investments your attorney may or may not make
- requiring your attorney to give priority to certain people in making loans or gifts on your behalf
- specifying how disagreements will be resolved, if you have named more than one attorney

These are just some examples of the types of conditions and restrictions you may want to think about. But remember, you are not required to put anything in this section.

# Continuing Power of Attorney for Property

(General Power of Attorney made in accordance with the Powers of Attorney Act and the Substitute Decisions Act, 1992)

**1. I** \_\_\_\_\_ revoke any previous continuing power of

(Print or type your full name here.)

attorney for property made by me and **APPOINT**: \_\_\_\_\_

(Print or type the name of the person or persons you appoint here.)

to be my attorney(s) for property.

**2.** If you have named more than one attorney and you want them to have the authority to act separately, insert the words "jointly and severally" here:

(This may be left blank.)

**3.** If the person(s) I have appointed, or any one of them, cannot or will not be my attorney because of refusal, resignation, death, mental incapacity, or removal by the court, **I SUBSTITUTE**: (This may be left blank.)

to act as my attorney for property with the same authority as the person he or she is replacing.

**4. I AUTHORIZE** my attorney(s) for property to do on my behalf, anything that I can lawfully do by an attorney, and specifically anything in respect of property that I could do if capable of managing property, except make a will, subject to the law and to any conditions or restrictions contained in this document.

In accordance with the *Powers of Attorney Act*, I declare that this power of attorney may be exercised during any subsequent legal incapacity on my part. This indicates my intention that this document will be a continuing power of attorney for property under the *Substitute Decisions Act, 1992* and may be used during my incapacity to manage property.

*In accordance with the Powers of Attorney Act, I declare that, after due consideration, I am satisfied that the authority conferred on the attorney(s) named in this power of attorney is adequate to provide for the competent and effectual management of all my estate in case I should become a patient in a psychiatric facility and be certified as not competent to manage my estate under the Mental Health Act. I therefore direct that in that event, the attorney(s) named in this power of attorney may retain this power of attorney for the management of my estate by complying with subsection 56(2) of the Mental Health Act and in that case the Public Trustee shall not become committee of my estate as would otherwise be the case under clauses 56(1)(a) and (b) of that Act. [Note: There are provisions under the Substitute Decisions Act which will make this statement unnecessary and inoperative after the law comes into effect].*

**5. CONDITIONS AND RESTRICTIONS** Attach, sign, and date additional pages if required.

(This part may be left blank.)

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## **Conditions and Restrictions** (continued)

## 6. DATE OF EFFECTIVENESS

Unless otherwise stated in this document, this continuing power of attorney will come into effect on the date it is signed and witnessed.

## 7. COMPENSATION

Unless otherwise stated in this document, I authorize my attorney(s) to take annual compensation from my property in accordance with the fee scale prescribed by regulation for the compensation of guardians of property made pursuant to section 90 of the *Substitute Decisions Act, 1992*. [Note: This provision will not become effective until the *Substitute Decisions Act, 1992*, is declared in force.]

**8. SIGNATURE:**

Date:

*(Sign your name in the presence of two witnesses.)*

**9. WITNESS STATEMENT AND SIGNATURE**

[Note: The following people cannot be witnesses: the attorney or his or her spouse or partner; the spouse, partner, or child of the person making the document, or someone that the person treats as his or her child; a person whose property is under guardianship or who has a guardian of the person; a person under the age of 18.]

We have no reason to believe that the grantor is incapable of giving a continuing power of attorney for property. We have signed this power of attorney in the presence of the person whose name appears above and in the presence of each other.

Witness #1: Signature: Print Name:  
Address: Date:

**Witness #2:** *Signature:* \_\_\_\_\_ *Print Name:* \_\_\_\_\_  
*Address:* \_\_\_\_\_ *Date:* \_\_\_\_\_

## Part 6: Date of Effectiveness

This document will give your attorney legal authority *as soon as it is signed and witnessed unless you specify otherwise in this form*. This does not prevent you, however, from looking after your own affairs while you are still capable of doing so. In other words, your attorney will not necessarily begin to manage your financial affairs right away. You and your appointed attorney may agree, for example, to leave this document in a safe place or with a trusted third person, such as your lawyer, accountant or other professional advisor. You can give written directions to the third person about when the power of attorney may be released to the person you have appointed. You would continue to manage your own financial affairs in the meantime.

This approach means that your attorney will not have to go through formal procedures to prove to third parties, such as banks and pension sources, that the power of attorney has come into effect.

Alternatively, you may wish to exercise more control over when the power of attorney may be used. You may state in **Part 5** that the document is only to come into effect on a certain date or when something specific happens. For example, you can say in this document that it won't take effect *unless you become mentally incapable of managing your property*. If you place this condition in your power of attorney, it is advisable to give very specific directions about how your mental incapacity is to be decided. You could, for example, say that a letter from your doctor or another trusted person which states that you are no longer mentally capable of managing property is sufficient proof.

If you *do* wish to restrict the circumstances in which the power of attorney may be used, **write this in Part 5**.

## Part 7: Compensation

Under the current law, your attorney is not allowed to take payment for his or her services from your funds unless you have specifically authorized it in the power of attorney or the court permits it. This will *change* when the *Substitute Decisions Act, 1992*, comes into effect.

Under the new law, your attorney(s) will be entitled to take payment at a rate to be set out in the law, *unless you say otherwise*. The amounts will be the same as those allowed to "guardians" of property (people who are appointed under the *Substitute Decisions Act* by the court or by the Public Guardian and Trustee). The current rates permitted to guardians of property are generally  $2\frac{1}{2}\%$  on monies received and paid out and  $\frac{2}{5}$  of 1% annually on investments. Rates under the new law have not yet been set, but will be by the time it is in effect.

If there is more than one attorney, they will have to share the permitted amount.

If you want to prohibit your attorney(s) from taking any payment or you want to set a specific amount yourself (such as a percentage of your income or a fixed yearly amount), you can do that by writing your directions in **Part 5** of the form.

## Part 8: Signature

- **Read each page of this form over carefully before you sign it.** [Note: Those who are providing assistance to someone who cannot read this form should see "Additional Guidelines" below.]
- **Before you sign, be sure that:**
  - 1. You understand the power your attorney will have and when the document will become effective.**
  - 2. You trust your attorney to act in your best interests.**
  - 3. You are signing this document of your own**